

FEDERAL RESERVE SYSTEM

Juniata Valley Financial Corp.
Mifflintown, Pennsylvania

Order Approving the Acquisition of a Bank

Juniata Valley Financial Corp. (“Juniata”), a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act¹ to acquire 39.2 percent of the outstanding voting shares of The First National Bank of Liverpool (“Liverpool Bank”), Liverpool, Pennsylvania.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (71 Federal Register 28,335 (2006)). The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

Juniata, with total consolidated assets of approximately \$410.6 million, operates one depository institution, The Juniata Valley Bank (“Juniata Bank”), also in Mifflintown. Juniata Bank is the 77th largest insured depository institution in Pennsylvania, controlling deposits of approximately \$341.6 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state (“state deposits”).³

¹ 12 U.S.C. § 1842.

² Juniata entered into an agreement to acquire 39.2 percent of the bank’s outstanding common shares from a trust that is the single largest shareholder of Liverpool Bank.

³ Asset and deposit data are as of June 30, 2005, and ranking data take into account mergers and acquisitions to July 25, 2006. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

Liverpool Bank is the 236th largest insured depository institution in Pennsylvania, controlling deposits of approximately \$30 million. On consummation of the proposal, Juniata would become the 70th largest depository organization in Pennsylvania, controlling deposits of approximately \$372 million, which represent less than 1 percent of state deposits.

The majority of Liverpool Bank's board of directors ("Commenters") opposes the proposal and has submitted comments to the Board urging denial on several grounds.⁴ The Board previously has stated that, in evaluating acquisition proposals, it must apply the criteria in the BHC Act in the same manner to all proposals, regardless of whether they are supported or opposed by the management of the institutions to be acquired.⁵ Section 3(c) of the BHC Act requires the Board to review each application in light of certain factors specified in the BHC Act. These factors require consideration of the effects of the proposal on competition, the financial and managerial resources and future prospects of the companies and depository institutions concerned, and the convenience and needs of the communities to be served.⁶

⁴ Three directors, one of whom represents the interest of the trust ("Selling Director"), did not join the comment.

⁵ See Cathay General Bancorp, 92 Federal Reserve Bulletin C19 (2006) ("Cathay"); Central Pacific Financial Corp., 90 Federal Reserve Bulletin 93, 94 (2004) ("Central Pacific"); North Fork Bancorporation, Inc., 86 Federal Reserve Bulletin 767, 768 (2000) ("North Fork"); The Bank of New York Company, Inc., 74 Federal Reserve Bulletin 257, 259 (1988) ("BONY").

⁶ In addition, the Board is required by section 3(c) of the BHC Act to disapprove a proposal if the Board does not have adequate assurances that it can obtain information on the activities or operations of the company and its affiliates, or in the case of a foreign bank, if such bank is not subject to comprehensive supervision on a consolidated basis. See 12 U.S.C. § 1842(c).

In considering these factors, the Board is mindful of the potential adverse effects that contested acquisitions might have on the financial and managerial resources of the company to be acquired and the acquiring organization. The Board has long held that, if the statutory criteria are met, withholding approval based on other factors, such as whether the proposal is acceptable to the management of the organization to be acquired, would be outside the limits of the Board's discretion under the BHC Act.⁷

As explained below, the Board has carefully considered the statutory criteria in light of all the comments and information provided by Commenters and the responses submitted by Juniata.⁸ The Board also has carefully considered all other information available, including information accumulated in the application process, supervisory information of the Board and other agencies, and relevant examination reports. In considering the statutory factors, particularly the effect of the proposal on the financial

⁷ See Cathay; Central Pacific; FleetBoston Financial Corporation, 86 Federal Reserve Bulletin 751, 752 (2000); North Fork; BONY.

⁸ Commenters expressed concern that Juniata would be able to control Liverpool Bank after consummation of the proposal and requested that the Board require Juniata to enter into passivity commitments if the Board approves the proposal. In cases when a bank holding company proposes to acquire between 5 and 25 percent of a class of voting shares of a bank or bank holding company without being deemed to control such entity, the Board has relied on certain commitments to ensure that the investing bank holding company would be unable to exercise a controlling influence over the bank or bank holding company involved in the proposal. See 12 U.S.C. § 1841(a)(2)(C); see also S&T Bancorp, Inc., 91 Federal Reserve Bulletin 74 (2005); Emigrant Bancorp, Inc., 82 Federal Reserve Bulletin 555 (1996). Providing such commitments is not appropriate in this case, however, because Juniata would own more than 25 percent of the voting shares of Liverpool Bank and, therefore, would be deemed by the BHC Act to control the bank. See 12 U.S.C. § 1841(a)(2)(A).

and managerial resources of Juniata, the Board has reviewed financial information, including the terms and cost of the proposal and the resources that Juniata proposes to devote to the transaction.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁹

Juniata Bank and Liverpool Bank compete directly in the Harrisburg, Pennsylvania banking market (“Harrisburg banking market”), which is defined as Cumberland, Dauphin, Juniata, Lebanon, and Perry Counties, all in Pennsylvania. Commenters contended that the relevant geographic market for reviewing this transaction should be Liverpool and the surrounding area that includes the portion of Perry County bordered by the Susquehanna River, the Juniata River, and Juniata County (“Proposed Market”). Commenters have asserted that the Proposed Market is the relevant market because the area is isolated from the rest of the Harrisburg banking market, particularly in the absence of a bridge near Liverpool to cross to the Dauphin County side of the Susquehanna River.

In reviewing this contention, the Board has considered the geographic proximity of the Harrisburg banking market’s population centers

⁹ 12 U.S.C. § 1842(c)(1).

and the worker commuting data from the 2000 census, which indicate that more than 60 percent of the labor force residing in Perry County commute to work in either Cumberland or Dauphin County. Residents of the Proposed Market also have highway access to Cumberland County and to Dauphin County over a bridge across the Susquehanna River.¹⁰ In addition, small-business lending data submitted by depository institutions in 2005 under the Community Reinvestment Act (“CRA”) regulations of the federal supervisory agencies indicate that approximately 22 percent of the total volume of small business loans made to businesses in Perry County were made by depository institutions without a branch in the county but with branches elsewhere in the Harrisburg banking market. These and a number of other factors indicate that the Harrisburg banking market, which includes Liverpool, is the appropriate local geographic banking market for purposes of analyzing the competitive effects of this proposal.

The Board has reviewed carefully the competitive effects of the proposal in the Harrisburg banking market in light of all the facts of record, including the number of competitors that would remain in the market, the relative shares of total deposits in depository institutions in the market (“market deposits”) controlled by Juniata Bank and Liverpool Bank,¹¹ the

¹⁰ The bridge is approximately 15 miles south of Liverpool.

¹¹ Deposit and market share data are as of June 30, 2005, taking into account mergers and acquisitions as of July 25, 2006, and reflect calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the

concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Guidelines (“DOJ Guidelines”),¹² other characteristics of the market, and public comment on the proposal.¹³

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the Harrisburg banking market. On consummation, the Harrisburg banking market would

market share calculation on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

¹² Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

¹³ Commenters asserted that the competitive factors the Board must consider should weigh against approval because consummation of the proposed transaction would not have a pro-competitive effect. In particular, Commenters expressed concern that the acquisition would eliminate the possibility of de novo expansion by Juniata into the Liverpool community. Section 3(c)(1) of the BHC Act, the provision applicable to the competitive considerations in this proposal, does not require evidence of pro-competitive effects as a condition for approval. Rather, it prohibits the Board from approving a proposal that would result in or would further a monopoly and permits the Board to approve a proposal that substantially lessens competition only if such effects are clearly outweighed by the convenience and needs of the community to be served.

remain unconcentrated, and numerous competitors would remain in the market.¹⁴

The DOJ also has reviewed the competitive effects of the proposal and advised the Board that consummation of the proposal likely would not have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking market in which Juniata and Liverpool Bank directly compete or in any other relevant banking market. Accordingly, based on all the facts of record, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary supervisors of the organizations involved in the

¹⁴ Juniata operates the 13th largest depository institution in the Harrisburg banking market, controlling deposits of \$179.7 million, which represent 2 percent of market deposits. Liverpool Bank is the 28th largest depository institution in the market, controlling deposits of approximately \$30 million, which represent less than 1 percent of market deposits. After the proposed acquisition, Juniata would operate the 11th largest depository institution in the market, controlling deposits of approximately \$209.7 million, which represent 2.3 percent of market deposits. Thirty depository institutions would remain in the banking market. The HHI would increase 1 point to 787.

proposal, publicly reported and other financial information, information provided by the applicant, and public comments received on the proposal.¹⁵

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board expects banking organizations contemplating expansion to maintain strong capital levels substantially in excess of the minimum levels specified by the Board's Capital Adequacy Guidelines. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

¹⁵ Commenters expressed concern that by entering into an agreement to sell the shares, the Selling Director might not have properly discharged his fiduciary duties to shareholders of Liverpool Bank. Juniata represented that the trust offered to sell the shares to Liverpool Bank before offering the shares to Juniata but that the trust could not reach an agreement with the bank. In addition, Commenters expressed concern that both the proposed sale price for the shares and the size of Juniata's proposed ownership would have a negative effect on the value of Liverpool Bank's shares. The Board notes that the courts have concluded that the limited jurisdiction to review applications under the BHC Act does not authorize the Board to consider matters relating only to corporate governance and the proper compensation of shareholders. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973). These matters involve state and federal securities laws and state corporate law that may be raised before a court with the authority to provide shareholders with adequate relief, if appropriate.

The Board has considered carefully the proposal under the financial factors. Juniata, Juniata Bank, and Liverpool Bank are all well capitalized and would remain so on consummation of the proposal.¹⁶ Based on its review of the record, the Board also believes that Juniata has sufficient financial resources to effect the proposal. The proposed transaction initially would be funded with debt that is expected to be repaid by a dividend from Juniata Bank.

The Board also has considered the managerial resources of Juniata, Juniata Bank, and Liverpool Bank.¹⁷ The Board has reviewed the examination records of these institutions, including assessments of their management, risk-management systems, and operations.¹⁸ In addition, the Board has

¹⁶ Commenters expressed concern that because the proposal would cause Liverpool Bank to lose its status as an “S-corporation,” the proposal would have a negative impact on Liverpool Bank’s capital. The Board notes that Liverpool Bank would remain well capitalized on consummation of the proposal.

¹⁷ Commenters have requested that the Board consider Pennsylvania Business Corporation Law, which discourages contested takeovers of Pennsylvania corporations, in evaluating this proposal. Liverpool Bank has not adopted the relevant provisions of Pennsylvania law as part of its corporate governance practices, and those provisions of state law, therefore, are not applicable in this case. In addition, Juniata has represented that it currently intends to hold the shares of Liverpool Bank for investment purposes only.

¹⁸ Commenters contended that this proposal would violate the Depository Institution Management Interlocks Act (12 U.S.C. § 3201) (“Interlocks Act”) because Juniata, which would be able to elect three directors to Liverpool Bank’s board, operates a bank (Juniata Bank) in the same community as Liverpool Bank. Under the Interlocks Act and the Board’s Regulation L (12 CFR 212 et seq.), the prohibition against interlocking management officials for banks in the same community does not apply to institutions that are affiliates. Juniata and Liverpool Bank would be affiliates under the Interlocks Act because Juniata would own more than 25 percent of the

considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money laundering laws. Juniata, Juniata Bank, and Liverpool Bank are all considered to be well managed.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the CRA.¹⁹ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.²⁰

The Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA

bank's voting shares, thereby making Liverpool Bank a subsidiary of Juniata. See 12 U.S.C. §§ 3201(3)(A) and 1841(d). Accordingly, a management official interlock between Juniata and Liverpool Bank would not be prohibited under the Interlocks Act.

¹⁹ 12 U.S.C. § 2901 *et seq.*

²⁰ 12 U.S.C. § 2903.

performance records of the relevant depository institutions, other information provided by Juniata, and public comment received on the proposal.²¹ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.²²

Juniata Bank received a "satisfactory" rating at its most recent CRA evaluation by the Federal Deposit Insurance Corporation, as of October 1, 2003. Liverpool Bank received an overall rating of "outstanding" at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of July 29, 2002. Juniata has represented that its purchase of shares is for investment purposes and currently has proposed no changes to the CRA programs at Liverpool Bank.

²¹ Commenters contended that Juniata plans to acquire all of Liverpool Bank and expressed concern that the consequence of such an acquisition could include loss of services and local jobs as part of a cost-savings initiative. Juniata has represented that its ownership interest in Liverpool Bank would be for purposes of investment and has not indicated that it would attempt to change the services provided by Liverpool Bank. In addition, the Board notes that the convenience and needs factor has been interpreted consistently by the federal banking agencies, the courts, and the Congress to relate to the effect of a proposal on the availability and quality of banking services in the community and does not extend to the effect of a proposed acquisition on employment in a community. See e.g. Wells Fargo & Company, 82 Federal Reserve Bulletin 445, 457 (1996). Moreover, if Juniata proposes to acquire additional shares of Liverpool Bank in the future, Federal Reserve System approval would be required. In such a case, the Federal Reserve System would have to evaluate the effects of the proposal on the convenience and needs of the communities to be served at that time, as required by the BHC Act.

²² See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,640 (2001).

Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all the fact of record, the Board has determined that the application should be, and hereby is, approved.²³ In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by Juniata with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

²³ Commenters requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for any of the banks to be acquired makes a timely written recommendation of denial of the supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 CFR 225.16(e). The Board has considered carefully Commenters' request in light of all the facts of record. In the Board's view, Commenters had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that Board has considered carefully in acting on the proposal. Commenters' request fails to demonstrate why written comments do not present their views adequately or why a hearing or meeting otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting is denied.

The proposed transaction may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Philadelphia, acting pursuant to delegated authority.

By order of the Board of Governors,²⁴ effective August 11, 2006.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

²⁴ Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Bies, Warsh, and Kroszner.